

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

IN RE SEARCH WARRANT)	
APPLICATION FOR LOCATION)	Case No. <u>24-MR-1454-SCY</u>
INFORMATION)	

**UNITED STATES’ MOTION FOR
EXTENSION OF TIME TO FILE BRIEF**

The United States respectfully submits this motion for an extension of time to file briefing in the above-captioned matter. As grounds therefore, the United States asserts:

1. On August 5, 2024, the United States submitted two applications for search warrants.

2. The first application sought prospective location information associated with a target phone—a so-called “PLI” warrant. The application included language requesting that the Court order the phone’s service provider to initiate a signal to allow law enforcement to collect the location information sought in the warrant. The second application sought to use a cell site simulator, or “Stingray,” to obtain a target’s location information.

3. After reviewing the first application, the Court ordered the United States to file a brief by noon on August 9, 2024, addressing five issues: (1) whether the “ping” warrant functions as a tracking device such that procedures related to obtaining a warrant for a tracking device, to include Rule 41(e)(2)(C), apply; (2) whether Rule 41 or the Stored Communication Act allow the Court to order a provider to produce prospective information as opposed to historical information; (3) whether the prospective information the United States seeks falls within the statutory definition of a “pen register” and/or “trap and trace device” as defined in 18 U.S.C. § 3127(3) & (4); (4) whether 18 U.S.C. § 3127(3) & (4) allows the United States to obtain the prospective location information requested; and, (5) if the United States intends to withdraw this warrant and submit a

revised warrant, whether the above issues are moot. *See* Doc. 1. The Court set a hearing on these issues on August 13, 2024. *Id.* at 3.

4. Later on August 6, 2024, the Court issued another order regarding the second application. *See* Doc. 2. Although the Court did not order written briefing, it scheduled a sealed hearing on the second application for August 13, 2024. *Id.* at 2.

5. The U.S. Attorney's Office is currently seeking guidance from attorneys with the Department of Justice's Computer Crime and Intellectual Property Section regarding the issues presented in the Court's orders. Additional time is necessary to allow those attorneys to respond and for the U.S. Attorney's Office to meaningfully incorporate that guidance into its brief to the Court, as well as its presentation at the hearing.

6. Additionally, the participation of the Assistant United States Attorney (AUSA) who submitted both warrant applications in the instant matter is important to the United States' arguments.¹ The approving AUSA has been on pre-approved annual leave since August 1, 2024, and is scheduled to remain on annual leave until August 13, 2024. That AUSA is physically out of the district while on leave.

¹ In its first order, the Court noted that it had recently convened a hearing involving the United States on August 1, 2024, addressing similar issues with respect to a different "ping" warrant. The Court also noted that, at this hearing, the United States represented it did not intend to submit warrants with "signal initiation" language in the future. A reminder email about that policy was circulated to all Criminal Division attorneys on August 1, 2024.

The Assistant United States Attorney (AUSA) who approved both applications in the instant case was out of the office on annual leave on August 1, 2024. He approved the instant applications prior to the August 1, 2024, hearing and prior to the policy reminder email circulated on the same date. However, due to other investigative priorities, the affiant did not submit the warrant documents to the Court until August 5, 2024.

7. The Court's second order concerns the specifics of a cell site simulator. The approving AUSA is, at the moment, the only AUSA familiar with the facts of that case and the justifications, if any, for the scope of the language in Attachment B.

8. As a result, additional time is necessary to research and brief the issues identified in the Court's August 5 and 6, 2024, orders.

9. Wherefore, the United States respectfully requests that Court extend the briefing deadline in this matter by one week from the date of the approving AUSA's return from leave, to August 20, 2024, with a hearing to follow as the Court's schedule allows.

Respectfully submitted,

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Electronically filed August 6, 2024

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I hereby certify that on August 6, 2024, I filed the foregoing document electronically through the CM/ECF system.

Electronically filed August 6, 2024

Louis C. Mattei

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